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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/412,261	10/05/1999	PIERRE BAUDET	98.601	9434

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EXAMINER	
CRUZ, LOURDES C	
ART UNIT	**PAPER NUMBER**
2827	20

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/412,261	BAUDET ET AL.	
	Examiner	Art Unit	
	Lourdes C. Cruz	2827	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-7* is/are rejected.

7)☒ Claim(s) *2* is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☐ Notice of References Cited (PTO-892)
16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18)☐ Interview Summary (PTO-413) Paper No(s). _____ .
19)☐ Notice of Informal Patent Application (PTO-152)
20)☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 3-5, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Derkits, Jr. et al. (US 5861665).

A semiconductor device comprising IC elements realized in a stack of layers on a substrate 15 and comprising means 33 for preventing pollution of the circuit elements and of the substrate by hydrogen (Col. 5, lines 55+) originating from their environment, characterized in that said means are formed by a layer of a material which absorbs hydrogen, which forms a pattern which is integrated with the circuit elements and of which an external surface is exposed and in contact with said environment.

See that Derkits, Jr. et al. also teaches a device wherein the getter layer forms patterns arranged between the IC elements or along the periphery (**Claim 4**), and comprising titanium (**Claims 5 and 7**).

Claim 3 fails to further structurally describe the present invention. Also with regard to claim **3**, a "product by process" claim is directed to the product per se, no

matter how actually made, In re Brown, 173 USPQ 685; In re Luck, 177 USPQ 523; In re Fessmann, 180 USPQ 324; In re Avery, 186 USPQ 161; In re Wertheim, 191 USPQ 90 (209 USPQ 554 does not deal with this issue); In re Marosi et al, 218 USPQ 289; and particularly In re Thorpe, 227 USPQ 964, all of which make it clear that it is the patentability of the final product per se which must be determined in a "product by process" claim, and not the patentability of the process, and that an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not. Note that applicant has the burden of proof in such cases, as the above case law makes clear.

Claims **1,4,5 and 6** are rejected under 35 U.S.C. 102(b) as being anticipated by Wolters et al. (EP 0513894).

Wolters teaches:

A semiconductor device comprising IC elements realized in a stack of layers on a substrate and comprising means for preventing pollution of the circuit elements and of the substrate by hydrogen originating from their environment, characterized in that said means are formed by a layer of a material which absorbs hydrogen (Col. 9, lines 50+) comprising palladium (**Claims 5 and 6**), which forms a pattern which is integrated with the circuit elements and of which an external surface is exposed and in contact with said environment.

See that Wolters teaches a getter arranged between the IC elements or along the periphery of the IC (**Claim 4**).

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9-30-02 have been fully considered but they are not persuasive. Applicant argues that:

- The Prior Art fails to recite "a hydrogen getter integrated with the circuit elements"
- Wolters coating layer 30 is not exposed

The above arguments are not persuasive because the prior art teaches a getter within the same package as the IC, meaning it is integrated within the same package. In previous Office Actions, the examiner responded to the argument regarding the alleged lack of teaching of exposure of layer 30 by Wolters. The examiner stated that "While Applicant claims exposure of the layer to said environment, said environment is not defined in such way that Wolter's wouldn't anticipate the invention as claimed for Wolter's layer is exposed to adjacent parts of the circuit elements."

Applicant has **again** responded to the examiner's response by citing Page 3, lines 29+ of the specification. However, the part of the present Application's Specification cited by the Applicant is exactly what contradicts his/her arguments since

they read "hydrogen from the environment is understood to mean the hydrogen which is enclosed together with the integrated circuit device **inside a hermetically sealed protective housing**."

The prior art cited shows a housing 11, element 31 is integrated with the circuit elements inside the same housing because it is in the housing and "integrated with the circuit elements" does not carry the weight Applicant appears to be given it. This is instead broad language that does not necessarily imply that the getter is in the active region. Instead, interpreted broadly, Applicant claims the elements being integrated in a package/housing. Moreover, it is noted that the drawings show a getter **peripheral** to the active regions, and not in them.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Evans Jr., Conte et al., Butt et al., Stupian et al., Wallace et al., and Kaloyeros et al.,teach hydrogen getters comprising titanium or palladium.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lourdes C. Cruz whose telephone number is 707-306-5691. The examiner can normally be reached on M-F 8:00- 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Talbott can be reached on 703-308-16909883. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Lourdes C. Cruz
Examiner
Art Unit 281527

Lourdes Cruz
December 15, 2002

KAMAND CUNEO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800